137-046-0300
Preference for Oregon Goods and Services

(1) Tiebreaker Preference and Award When Offers Are Identical. Under ORS 279A.120, when a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the Contracting Agency shall Award the Contract based on the following order of precedence:

(a) The Contracting Agency shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon.

(b) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, the Contracting Agency shall Award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(2) Determining if Offers are Identical. ~~A~~For purposes of Section 1 of this rule, a Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Offers received in response to a Special Procurement conducted under ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in Writing, that two or more Offers are equally advantageous to the Contracting Agency.

(d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with 279B.070(4).

(3) Determining if Goods or Services or Personal Services are Manufactured or ~~Produced~~Performed in Oregon. In applying the preference described in Section 1 of this rule, a Contracting ~~Agencies~~Agency shall determine whether ~~a Contract~~the predominant purpose of the Solicitation is ~~predominantly for~~to acquire Goods, Services or Personal Services, and ~~then use~~may apply the ~~predominant purpose~~preference to ~~determine if the Goods~~Offeror's Good, Services, or Personal Services ~~are~~ manufactured~~, produced, or performed~~ in Oregon that fulfill the predominant purpose of the Solicitation. Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time the Contracting Agency determines ~~is~~ appropriate, any information the Contracting Agency may need to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods, Services or Personal Services are

manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Offer.

(4) Procedure for Drawing Lots. When this rule calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Discretionary ~~Preference and Award.~~Preferences. Under ORS 279A.128, a Contracting Agency may provide the following discretionary preferences:

(a) A Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than five percent:

(A) For Goods or Services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754, submits with its Offer a valid certificate of existence issued pursuant to ORS 60.027, and has the majority of the benefit company's regular, full-time workforce located in this state.

(B) For Goods or Services provided by an entity in which the entity's employees own at least 50 percent of the ownership interest in the entity directly or through an employee stock ownership plan recognized by the Internal Revenue Service as a qualified stock ownership plan.

(b) A Contracting Agency may provide the preference described in subsection (a) of this Section only if the price offered by an Offeror that otherwise qualifies for the preference is not more than 5 percent greater than the price offered by any other Offeror. A Contracting Agency shall apply the preference described in subsection (a) of this Section by reducing the price offered by an Offeror that qualifies for the preference by the amount described in the Solicitation Document for purposes of evaluation of the qualifying Offeror's Offer.

(c) A Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for ~~(i)~~ Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon ~~or (ii) for goods or services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754 and has the majority of the benefit company's regular, full-time workforce located in this state~~, if the ~~goods~~Goods or ~~services~~Services cost not more than ~~five~~ten percent more than the ~~goods or services available from a contractor~~price offered by any other Offeror proposing Goods that are not fabricated or processed, or Services that ~~is~~are not ~~a benefit company . When the~~ performed within this state. A Contracting Agency ~~provides for a~~ shall apply the preference ~~under~~described in this Section~~, and~~ by reducing the price offered by an Offeror that qualifies for the preference by the amount described in the Solicitation Document for purposes of evaluation of the qualifying Offeror's Offer.

(d) If more than one Offeror qualifies for ~~the preference,~~a preference provided to Offerors pursuant to subsections (a) or (c) of this Section, then the Contracting ~~Agency~~agency may give a further preference to ~~a qualifying~~an Offeror that qualifies for the preference and that resides in or is headquartered in ~~Oregon.~~this state.

(e) A Contracting ~~Agency~~agency may ~~establish a preference~~give a preference as described in Section (a)(B) of this Section only to an Offeror that submits evidence that it qualifies for the preference. The Contracting Agency shall include in the Solicitation Document in which it establishes the preference a description of the evidence an Offeror must provide to qualify for the preference.

(f) A Contracting Agency, by Written order, may set a higher cost percentage ~~higher than ten percent by written order that finds good cause to establish the higher percentage and which explains~~for any preference described in subsection (a) of this section based on a Written determination establishing the Contracting Agency's findings that there is good cause to set a higher cost percentage and explaining the reasons ~~and evidence for finding good cause to establish a~~for the higher cost percentage.

(g) A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Statutory/Other Authority: ORS 279A.065, OL 2011 & ch 237, OL 2025 & ________
Statutes/Other Implemented: ORS 279A.065, ch 237, ORS 279A.120 & ORS 279A.128
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DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06
DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05